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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 UMBERTO HERNANDEZ-  
VASQUEZ,  
15 Defendant.

CASE NO. 15cr2517 WQH  
ORDER

HAYES, Judge:

16 The matter before the Court is the motion to dismiss the indictment filed by the  
17 Defendant. (ECF No. 62).

18 **BACKGROUND FACTS**

19 On September 4, 2015, Defendant was arrested and a complaint was filed  
20 charging the Defendant with being a removed alien found in the United States in  
21 violation of 8 U.S.C. § 1326(a) and (b). Defendant was represented by counsel from  
22 the Federal Defenders Office.

23 On September 30, 2015, an indictment was filed charging the Defendant with  
24 being a removed alien found in the United States in violation of 8 U.S.C. § 1326(a) and  
25 (b).

26 On October 1, 2015, Defendant was arraigned on the indictment and requested  
27 substitute counsel. The Court appointed substitute counsel at the request of the  
28 Defendant. (ECF No. 13).

1 On October 26, 2015, the Government filed a motion for fingerprint exemplars.  
2 (ECF No. 15).

3 On November 4, 2015, motion to compel discovery filed by the Defendant. (ECF  
4 No. 16).

5 On December 7, 2015, the Court held a hearing and Defendant requested a  
6 continuance. (ECF No. 19).

7 On December 21, 2015, Defendant again requested substitute counsel and the  
8 Court denied the request finding insufficient reasons. The Court found no ill will or  
9 conflict between Defendant and his appointed counsel. (ECF No. 21).

10 On January 6, 2016, Counsel for Defendant requested competency evaluation.  
11 (ECF No. 22).

12 On January 20, 2016, Court ordered a competency determination pursuant to 18  
13 U.S.C. §§ 4241, 4247 at the request of the defense. (ECF No. 30).

14 On February 22, 2016, Court held a competency hearing. The Court reviewed  
15 the competency evaluation which concluded that there is no objective evidence to  
16 indicate that the Defendant is suffering from any mental disease or defect rendering  
17 him unable to understand the nature and consequences of the court proceedings against  
18 him or unable to assist properly in his defense. The Court found Defendant to be  
19 competent and set jury trial for May 10, 2016. (ECF No. 31).

20 On March 7, 2016, the Court held a hearing and Defendant again requested  
21 substitute counsel. The Court appointed Defendant a third counsel. (ECF No. 34). ~~On~~  
22 March 14, 2016, the Court held a hearing to confirm the appointment of new counsel.  
23 Counsel accepted the appointment and requested that the Court vacate the May 10, 2016  
24 trial. The Court vacated the trial date and set a status hearing at the request of the  
25 defense for May 9, 2016. (ECF No. 35).

26 On March 28, 2016, Defendant filed an additional motion to compel discovery  
27 (ECF No. 36).

28 On May 9, 2016, the Court held a hearing. At the request of the defense, the

1 Court set a date of June 6, 2016 for Defendant to file any additional motions and a  
2 further hearing date of June 27, 2016. (ECF No. 39).

3 On June 27, 2016, the Court held a hearing. The Court set a date for filing  
4 motions in limine and set a trial date for August 2, 2016. (ECF No. 40).

5 On July 18, 2016, the Defendant filed motions in limine. (ECF No. 42).

6 On July 18, 2016, the Government filed motions in limine. (ECF No. 43).

7 On July 18, 2016, the Court set a hearing at the request of defense counsel. At  
8 the hearing, Defendant requested to represent himself. The Court ordered a second  
9 psychiatric evaluation and requested that the evaluator address whether the Defendant  
10 was mentally competent to represent himself. (ECF No. 44).

11 On July 19, 2016, the Court ordered an second mental evaluation pursuant to 18  
12 U.S.C. § 4247. The Court found that “the proceedings from February until the present  
13 time raise a ‘bona fide doubt’ as to this Defendant’s competence to understand the  
14 nature and consequences of the proceedings against him or to assist properly in his  
15 defense or to represent himself. The court has an obligation under 18 U.S.C. § 4241(a)  
16 to conduct a further hearing.” (ECF No. 45). The Court ordered the evaluation to be  
17 prepared and provided the Court and counsel by August 19, 2016 and scheduled a status  
18 hearing pursuant to section 4241(c) for August 29, 2016. The Court vacated the August  
19 2, 2016 trial date.

20 On August 22, 2016, defense counsel filed a motion to continue the hearing  
21 scheduled for August 29, 2016 to September 6, 2016 in order to allow defense counsel  
22 adequate time to meet and confer with the Defendant in preparation fo the hearing.  
23 (ECF No. 48).

24 On September 6, 2016, the Court held a competency hearing to review the  
25 evaluation. The forensic report prepared by a forensic psychologist dated August 19,  
26 2016 concluded that there is no objective evidence to indicate that the Defendant is  
27 suffering from any mental disease or defect rendering him unable to understand the  
28 nature and consequences of the court proceedings against him or unable to assist

1 properly in his defense. The report further concluded that the Defendant is not able to  
2 represent himself in future court proceedings based upon Defendant's low average  
3 intellectual functioning, anxiety and general fearfulness, poor reasoning and insight.  
4 Defendant again requested substitute counsel. Defendant requested substitute counsel.  
5 The Court considered the timeliness of the motion, the reasons stated by the Defendant,  
6 and the extent of any breakdown of communication and consequent inability to present  
7 a defense. The Court concluded that the case had been significantly delayed. The Court  
8 found that the nature of the conflict asserted by the Defendant was based on the  
9 Defendant's general unreasonableness. The Court noted that present counsel had filed  
10 motions, that present counsel had conducted himself professionally, and that present  
11 counsel was more than competent to defend this case. The Court found no ill-will  
12 between present counsel and the Defendant, and no reason to conclude that the same  
13 conflicts will not arise with another counsel.

14 On September 8, 2016, the Court held a further status hearing. Defendant  
15 requested to represent himself and the Court took this request under submission.

16 On September 14, 2016, the Court held a further status hearing in order to inform  
17 the Defendant of the (1) the nature of the charges against him; (2) the possible  
18 penalties; and (3) the dangers and disadvantages of self-representation. Defendant  
19 continued to assert his constitutional right to self-representation. (ECF No. 57).

20 On September 14, 2016, the Court granted the request by the Defendant to  
21 represent himself in these proceedings. (ECF No. 58).

22 On September 19, 2016, the Court held a hearing and informed the Defendant of  
23 the dangers of representing himself under *Farretta*. Pursuant to the request of the  
24 Defendant, the Court granted the Defendant until October 17, 2016 to file motions. The  
25 Court set the jury trial for December 6, 2016. (ECF No. 59).

26 On October 24, 2016, the Court held a hearing in order to receive the Defendant's  
27 motion to dismiss the indictment (ECF No. 62). The Government filed a response in  
28 opposition.

## CONTENTIONS OF THE PARTIES

Defendant moves to dismiss the indictment on the grounds that his rights under the Sixth Amendment and the Fourteenth Amendment to the United States Constitution have been violated. Defendant contends that the Court has disregarded his right to a speedy trial. Defendant further moves the Court for dismissal on the grounds that there is insufficient evidence against him.

The Government contends that each continuance in this case was required and complied with the requirements of the Speedy Trial Act. The Government further contends that indictment set forth a substantive basis for the charges in the indictment.

## RULING OF THE COURT


18 U.S.C. Section 3161(c)(1) of the Speedy Trial Act requires that “[i]n any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.” Section 3161(h) provides for a number of exclusions from the period of time used in computing the 70 day period.

A review of the record shows that time has been properly excluded under the provisions of the Speedy Trial Act in this case for the filing of initial motions pursuant to 18 U.S.C. § 3161(h)(1)(D); to accommodate the Defendant’s multiple requests for substitute counsel pursuant to 18 U.S.C. § 3161(h)(7)(B)(iv); to allow necessary examination to determine mental competency requested by Defendant pursuant to 18 U.S.C. § 3161(h)(1)(A); to allow necessary examinations to determine mental competency to represent himself requested by Court pursuant to 18 U.S.C. § 3161(h)(1)(A); for the filing of pretrial motion prior to trial pursuant to 18 U.S.C. § 3161(h)(1)(D); and to allow the Defendant to exercise his constitutional right to represent himself pursuant to 18 U.S.C. § 3161(h)(7)(B)(iv). The Court concludes that time has been properly excluded in each instance under the provisions of the Speedy

1 Trial Act to allow the Defendant to exercise his rights to counsel and self-representation  
2 and to assure that the Defendant has the mental competency to proceed. T h e  
3 indictment properly charges the Defendant with a violation of with being a removed  
4 alien found in the United States in violation of 8 U.S.C. § 1326(a) and (b). The Court  
5 concludes that the issue of sufficient or insufficient evidence remain for resolution at  
6 trial.

7 IT IS HEREBY ORDERED that motion to dismiss the indictment filed by the  
8 Defendant (ECF No. 62) is denied.

9 DATED: November 18, 2016

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11 **WILLIAM Q. HAYES**  
United States District Judge